

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1274 of 1998

with

CIVIL REVISION APPLICATION No 1275 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AGRICULTURAL PRODUCE MARKET COMMITTEE

Versus

MEHTA TRADING COMPANY

Appearance:

1. Civil Revision Application No. 1274 of 1998
MR BS PATEL for Petitioners
MR PB MAJMUDAR for Respondent No. 1
 2. Civil Revision ApplicationNo 1275 of 1998
MR BS PATEL for Petitioners
MR PB MAJMUDAR for Respondent No. 1
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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 19/04/99

ORAL JUDGEMENT

1. In both these matters rule was issued by order dated 30/9/1998 and now both the Revision Applications have been placed for final disposal before this Court.

2. Heard. It appears that the impugned order has been passed below applications Exhs. 18, 20 and 24. In so far as the application exh. 24 is concerned, the parties are not at dispute as can be seen from the impugned order, since public notice was also issued and interested persons were before the trial Court. Hence, what this Court is required to deal with are the applications exh. 18 and 20 and the impugned order passed by the learned trial Judge. The prayer in application exh. 18 is in substance to raise preliminary issue of jurisdiction in the first instance and then to decide the suit and the injunction application. In so far as the application exh. 20 is concerned, the prayer is to raise preliminary issue with regard to want of statutory notice and its effect on the suit. The learned trial Judge, while rejecting both the applications, has incidentally decided the questions of jurisdiction and effect of want of statutory notice. In my opinion, both the applications have been moved by the defendants under misconception and at the stage where they could not have been moved. What the defendants could have done is to incidentally argue the questions of jurisdiction and want of statutory notice at the final hearing of application exh.5 and thereafter at an appropriate stage to move an appropriate application for raising preliminary issues, if thought fit. Under such circumstances, the trial Court was unnecessarily led to give tentative findings on the questions of jurisdiction as well as want of statutory notice without raising such issue and without going to the hearing of application exh. 5. The fault in the first instance lies with the petitioners/defendants in the suit. Under such circumstances, following directions are required to be issued :-

The learned trial Judge is directed to hear application exh.5 and at the hearing it will be open to the parties to agitate all questions including question of jurisdiction and want of notice for tentative finding on Exh.5 and not for determination of those issues in the suit. It will be open to the trial Court to reach the same tentative finding without being influenced by the impugned order or this order, on merits, but after hearing both the parties. It is accordingly directed that the trial Court will decide interim injunction application Exh.5 as

expeditiously as possible after hearing both the parties on all the questions and it will be open to the defendants to move appropriate application for raising preliminary issues after stage of interim injunction application is over. In case the tentative findings are recorded by the learned trial Judge as per the impugned orders, it would be open to the petitioners to raise the questions before the appellate Court.

This order will replace the impugned order.

Subject to these directions, rule is discharged
with no order as to cost in both the Revision
Applications.

PVR. * * *